

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

WILLIAM JOHN DAUGHERTY,

Petitioner,

vs.

TERRI GONZALES, Warden, et al.,

Respondent.

Civil No. 11cv0545 BTM

**ORDER DENYING WITHOUT  
PREJUDICE PETITIONER'S  
REQUEST FOR APPOINTMENT OF  
COUNSEL**

[Doc. Nos. 11, 20, 22.]

Petitioner, a state prisoner proceeding pro se, has requested appointment of counsel to pursue his petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. The request for appointment of counsel is denied.

The Sixth Amendment right to counsel does not extend to federal habeas corpus actions by state prisoners. McCleskey v. Zant, 499 U.S. 467, 495 (1991); Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986); Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). However, financially eligible habeas petitioners seeking relief pursuant to 28 U.S.C. § 2254 may obtain representation whenever the court "determines that the interests of justice so require." 18 U.S.C. § 3006A(a)(2)(B) (West Supp. 2005); Terrovona v. Kincheloe, 912 F.2d 1176, 1181 (9th Cir. 1990); Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984); Hoggard v. Purkett, 29 F.3d 469, 471 (8th Cir. 1994).

The interests of justice require appointment of counsel when the court conducts an evidentiary hearing on the petition. Terrovona, 912 F.2d at 1177; Knaubert, 791 F.2d at 728; Abdullah v. Norris, 18 F.3d 571, 573 (8th Cir. 1994); Rule 8(c), 28 U.S.C. foll. § 2254. The

1 appointment of counsel is discretionary when no evidentiary hearing is necessary. Terrovona,  
 2 912 F.2d at 1177; Knaubert, 791 F.2d at 728; Abdullah, 18 F.3d at 573.

3 In the Ninth Circuit, “[i]ndigent state prisoners applying for habeas relief are not entitled  
 4 to appointed counsel unless the circumstances of a particular case indicate that appointed counsel  
 5 is necessary to prevent due process violations.” Chaney, 801 F.2d at 1196; Knaubert, 791 F.2d  
 6 at 728-29. A due process violation may occur in the absence of counsel if the issues involved  
 7 are too complex for the petitioner. In addition, the appointment of counsel may be necessary if  
 8 the petitioner has such limited education that he or she is incapable of presenting his or her  
 9 claims. Hawkins v. Bennett, 423 F.2d 948, 950 (8th Cir. 1970).

10 In the Eighth Circuit, “[t]o determine whether appointment of counsel is required for  
 11 habeas petitioners with nonfrivolous claims, a district court should consider the legal complexity  
 12 of the case, the factual complexity of the case, the petitioner’s ability to investigate and present  
 13 his claim, and any other relevant factors.” Abdullah v. Norris, 18 F.3d at 573 (citing Battle v.  
 14 Armontrout, 902 F.2d 701, 702 (8th Cir. 1990)); Hoggard, 29 F.3d at 471; Boyd v. Groose, 4  
 15 F.3d 669, 671 (8th Cir. 1993); Smith v. Groose, 998 F.2d 1439, 1442 (8th Cir. 1993); Johnson  
 16 v. Williams, 788 F.2d 1319, 1322-23 (8th Cir. 1986).

17 Because these factors are useful in determining whether due process requires the  
 18 appointment of counsel, they are considered to the extent possible based on the record before  
 19 the Court. Here, Petitioner has sufficiently represented himself to date. From the face of the  
 20 petition, filed pro se, it appears that Petitioner has a good grasp of this case and the legal issues  
 21 involved. Under such circumstances, a district court does not abuse its discretion in denying a  
 22 state prisoner’s request for appointment of counsel as it is simply not warranted by the interests  
 23 of justice. See LaMere v. Risley, 827 F.2d 622, 626 (9th Cir. 1987). At this stage of the  
 24 proceedings, the Court finds that the interests of justice do not require the appointment of  
 25 counsel.

26 The Court also notes that “[w]here the issues involved can be properly resolved on the  
 27 basis of the state court record, a district court does not abuse its discretion in denying a request  
 28 for court-appointed counsel.” Hoggard, 29 F.3d at 471; McCann v. Armontrout, 973 F.2d 655,

1 661 (8th Cir. 1992); Travis v. Lockhart, 787 F.2d 409, 411 (8th Cir. 1986) (per curiam) (holding  
 2 that district court did not abuse its discretion in denying § 2254 habeas petitioner's motion for  
 3 appointment of counsel where allegations were properly resolved on basis of state court record).  
 4 Here, Petitioner challenges his conviction on the basis of ineffective assistance of counsel,  
 5 failure to disclose exculpatory evidence, denial of the right to confront witnesses, instructional  
 6 error, and that the cumulative effect of all the trial court errors denied him due process.  
 7 Respondent has provided the Court with the Clerk's and Reporter's transcripts from Petitioner's  
 8 San Diego Superior Court Case No. SCD197549. At this stage of the proceedings, it appears  
 9 the Court will be able to properly resolve the issues involved on the basis of the state court  
 10 record.

11       “The procedures employed by the federal courts are highly protective of a pro se  
 12 petitioner's rights. The district court is required to construe a pro se petition more liberally than  
 13 it would construe a petition drafted by counsel.” Knaubert, 791 F.2d at 729 (citing Haines v.  
 14 Kerner, 404 U.S. 519, 520 (1972) (holding pro se complaint to less stringent standard) (per  
 15 curiam)); Bashor, 730 F.2d at 1234. The Petition in this case was pleaded sufficiently to warrant  
 16 this Court's order directing Respondent to file an answer or other responsive pleading to the  
 17 Petition.

18       Accordingly, because further briefing is not required of Petitioner, his claim that he is at  
 19 a disadvantage in responding and thus needs counsel is without merit. In the event the Court  
 20 invites Petitioner to file a motion to amend his petition, the Court is confident that he will  
 21 adequately raise each claim for relief as he has done so to date.

22       Petitioner also claims counsel should be appointed because he needs an investigator to  
 23 locate percipient witnesses to testify on his behalf and to locate evidence and hire experts.  
 24 Petitioner argues that this case cannot be decided solely on the basis of state court records,  
 25 however, unless the Court determines that an evidentiary hearing is warranted, the case will be  
 26 decided on the basis of the state court record.

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1        This Court will probably not require that Petitioner file further pleadings.<sup>1</sup> “The district  
 2 court must scrutinize the state court record independently to determine whether the state court  
 3 procedures and findings were sufficient.” Knaubert, 791 F.2d at 729; Richmond v. Ricketts, 774  
 4 F.2d 957, 961 (9th Cir.1985); Rhinehart v. Gunn, 598 F.2d 557, 558 (9th Cir.1979) (per  
 5 curiam); Turner v. Chavez, 586 F.2d 111, 112 (9th Cir.1978) (per curiam). Even when the  
 6 district court accepts a state court’s factual findings, it must render an independent legal  
 7 conclusion regarding the legality of a petitioner’s incarceration. Miller v. Fenton, 474 U.S. 104,  
 8 112 (1985). The district court’s legal conclusion, moreover, will receive de novo appellate  
 9 review. Hayes v. Kincheloe, 784 F.2d 1434, 1436 (9th Cir. 1986).

10       The assistance counsel provides is valuable. “An attorney may narrow the issues and  
 11 elicit relevant information from his or her client. An attorney may highlight the record and  
 12 present to the court a reasoned analysis of the controlling law.” Knaubert, 791 F.2d at 729.  
 13 However, as the court in Knaubert noted: “unless an evidentiary hearing is held, an attorney’s  
 14 skill in developing and presenting new evidence is largely superfluous; the district court is  
 15 entitled to rely on the state court record alone.” Id. (citing Sumner v. Mata, 449 U.S. 539,  
 16 545-57 (1981), and 28 U.S.C. § 2254(d)).<sup>2</sup> Because this Court denies Petitioner’s motion for  
 17 appointment of counsel, it must “review the record and render an independent legal conclusion.”  
 18 Id. Moreover, because the Court does not appoint counsel, it must “inform itself of the relevant  
 19 law. Therefore, the additional assistance provided by attorneys, while significant, is not  
 20 compelling.” Id.

21       If an evidentiary hearing is required, Rule 8(c) of the Rules Governing Section 2254  
 22 Cases requires that counsel be appointed to a petitioner who qualifies under 18 U.S.C.  
 23 § 3006A(a)(2)(B). Rule 8(c), 28 U.S.C. foll. § 2254; see Wood v. Wainwright, 597 F.2d 1054

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 25       <sup>1</sup> Although Petitioner may file a Traverse to Respondent’s Answer, Rule 5, and the general procedure set up by the entire set  
 26 of rules following § 2254, “does not contemplate a traverse to the answer, except under special circumstances.” Rule 5, 28 U.S.C. foll.  
 27 § 2254 advisory committee notes. “In actual, practice, the traverse tends to be a mere pro forma refutation of the [answer], serving little  
 if any expository function. In the interests of a more streamlined and manageable habeas corpus procedure, it is not required except in  
 those instances where it will serve a truly useful purpose.” Id.

28       <sup>2</sup> When a pro se petitioner presents a palpable claim that state court factual findings are erroneous, this Court properly exercises  
 its discretion to hold an evidentiary hearing. In such circumstances, counsel will be appointed. See Rule 8, 28 U.S.C. foll. § 2254.  
 Petitioner has not made such a showing in this case.

1 (5th Cir. 1979). In addition, the Court may appoint counsel for the effective utilization of any  
2 discovery process. Rule 6(a), 28 U.S.C. foll. § 2254. For the above-stated reasons, the “interests  
3 of justice” in this matter do not compel the appointment of counsel. Accordingly, Petitioner’s  
4 request for appointment of counsel is **DENIED** without prejudice.

5 **IT IS SO ORDERED.**

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7 DATED: January 12, 2012

8   
9 Hon. Bernard G. Skomal  
U.S. Magistrate Judge  
10 United States District Court  
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